

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) |
| |) |
| Promoting Efficient Use of |) WT Docket No. 00-230 |
| Spectrum Through Elimination of |) |
| Barriers to the Development of |) |
| Secondary Markets |) |

To: The Commission

COMMENTS OF MARITEL, INC.

Maritel, Inc. ("Maritel"), by its attorneys, and pursuant to the provisions of section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (2000), hereby submits its comments responsive to the *Notice of Proposed Rule Making* ("Notice")¹ in the above-captioned proceeding. For the reasons set forth more fully below, the Commission should include Part 80 VHF Public Coast ("VPC") licensees among those entities for which it proposes to clarify its rules and policies regarding spectrum leasing. Maritel also urges the Commission to interpret its regulations to permit spectrum leasing with the fewest regulatory burdens possible.

I. Background.

Maritel is the largest provider of VHF public coast station services in the United States. Its current operations consist of stations throughout most of the coastal United States and U.S. inland waterways each interconnected to Maritel's control switching office located in Biloxi, Mississippi.

¹ *Notice of Proposed Rule Making*, WT Docket No. 00-230, FCC 00-402, rel. Nov. 27, 2000; see also 65 Fed. Reg. 81475 (December 26, 2000).

Maritel actively participated in the FCC's auction of VPC station licenses, and was the winning bidder for nine regional licenses. Maritel is in the initial stages of building a North American VPC network that will offer advanced telecommunications services on a cost-effective basis. Upon completion of its VPC network, Maritel will be able to provide state of the art, seamless maritime communications services in all U.S. coastal areas and major inland waterways.

As a geographic area wireless licensee, Maritel is pleased that the FCC wishes to encourage a licensee's flexible use of its assigned spectrum. Because spectrum leasing is one way that the Commission may make more flexible a licensee's use of its spectrum, Maritel supports the Commission's proposals and wishes to ensure that VPC licensees are afforded the same flexibility as are other geographic area licensees. Accordingly, Maritel is pleased to have the opportunity to submit these comments.

II. Discussion.

A. The Notice Appears to Exclude VPC Licensees.

In the *Notice*, the FCC tentatively concludes that it should exclude the "maritime" radio services from its spectrum leasing proposals due to the unique considerations for this and other radio services similarly excluded. *Notice* at n.19. The Commission should abandon its tentative conclusion or clarify that it did not intend to exclude VPC licensees.

As an initial matter, it is possible that, by employing the general term "maritime," the FCC did not intend to exclude VPC licensees at all.² Of the many maritime radio services, only a limited number are authorized to provide commercial mobile radio services ("CMRS")³. The FCC may have inadvertently excluded all maritime services, instead of excluding all but those maritime services

² Part 80 of the FCC's rules covers "Stations in the maritime services."

³ Licensees authorized for Automated Maritime Telecommunications Systems ("AMTS") are also considered CMRS providers. See *Amendment of the Commission's Rules Concerning Maritime Communications*, FCC 00-370, rel. Nov. 16, 2000.

authorized to provide CMRS facilities.⁴ Further, the VPC service is an ideal candidate for leasing arrangements. Maritel's nine authorized VPC service areas cover vast areas of the United States and its navigable waterways. Maritel's primary business focus today is on providing communications services to the maritime industry and the boating public. Maritel may not, therefore, make immediate use of the spectrum for which it has been authorized in areas sufficiently far from navigable waterways so as not to cause harmful interference to its marine operations.⁵ In at least one case, Maritel has been approached by a public safety entity that seeks to lease spectrum from Maritel for public safety services.

Thus, there is no difference or unique consideration that should separate Maritel from other CMRS licensees for purposes of spectrum leasing.⁶ Certainly none are identified in the *Notice*. VPC licensees, similar to the fourteen radio services identified in the *Notice*, *id.* at n.19, are licensed by geographic area, for exclusive blocks of spectrum, and operate under flexible channelization and

⁴ The FCC similarly inadvertently excluded VPC licensees from its revised forbearance procedures for CMRS *pro forma* transfers and assignments. The Commission later recognized its inadvertent omission and included VPC licensees, noting the differences between certain maritime (*e.g.*, Ship Radio) licenses and VPC licenses. *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act*, 15 FCC Rcd 5942, ¶ 43 (2000).

⁵ The Commission expressly recognized this when it previously permitted land mobile radio licensees to secure VPC spectrum in areas not adjacent to navigable waterways. *See Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, 10 FCC Rcd 8419 (1995).

⁶ Maritel recognizes that the FCC's regulations impose an obligation on it to provide priority to maritime communications. As noted below, the Commission proposes to require that lessees observe all of the requirements associated with the spectrum being leased. Nevertheless, the restrictions imposed on VPC licensees should no more act as a bar to Maritel leasing spectrum than would restrictions imposed on licensees of personal communications service ("PCS") or cellular spectrum. For example, if a PCS licensee decides to lease spectrum to a paging provider, the paging provider is not obligated to deliver 911 emergency calls, even though that obligation is imposed on the PCS licensee when operating a mobile telephony system. Because the Commission would not logically require the paging lessee to offer those 911 services, it should not require land mobile lessees of VPC frequency assignments to provide maritime communications. *Accord Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965, ¶ 52 (1996) ("The regulatory structure for providers of the primary service to which the spectrum is allocated does not necessarily dictate the type of regulation to which every service provider in that same band will be subject regardless of the particular attributes of that service.")

usage schemes. There is simply no reason, technical or otherwise, why VPC licensees should not be permitted to lease their frequency assignments.

Finally, the Commission is obligated by statute to regulate similar CMRS services in a similar manner. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd. 7988 (1994). Maritel certainly faces the burdens of CMRS regulation, and must perform the same common carrier tasks, and contribute to the same subsidies intended for PCS and cellular providers. Therefore, Maritel should equally be entitled to receive the benefits of CMRS regulation as well. Accordingly, the FCC should include VPC licensees in this proceeding.

B. Maritel Supports the FCC's Leasing Proposals.

The *Notice* indicates that the FCC proposes to permit licensees to “lease all or a portion of their licensed spectrum.” *Notice* at ¶ 25. The *Notice* also states that the FCC intends to permit this leasing, subject only to several modest restrictions, intended to ensure that (i) licensees remains responsible in the event of non-compliance; (ii) lessees meet the eligibility and technical requirements applicable to the spectrum under lease; and (iii) licensees reserve the contractual right to ensure strict compliance with the FCC's rules. *Notice* at ¶ 79. The Commission proposes to employ these criteria to ensure compliance with Section 310(d) of the Communications Act, which otherwise requires licensees to maintain *de jure* and *de facto* “control” of their licensed spectrum. Maritel supports this approach which, as the Commission acknowledges, is based on the criteria the FCC employed in its 700 MHz “Guard Band Manager” proceeding. See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, 15 FCC Rcd. 5299 (1999).

Maritel urges the Commission not to specify further regulatory requirements relating to leasing in situations where (i) the licensee-lessor operates in a commercial radio service, (ii) the leased spectrum was secured with no special auction benefits for small businesses, or set-aside for a

particular use such as public safety, and (iii) the lease does not implicate any special FCC licensing policies. The Commission should reserve additional scrutiny only for those situations that merit such scrutiny (*e.g.*, ensuring compliance with the FCC's statutorily-mandated foreign ownership limitations), but should not otherwise impose unnecessary restrictions on most commercial licensees.

The Commission should also clarify, as the *Notice* suggests, *id.* at ¶ 16, that there is no existing, *per se* regulation or policy that declares leases or sharing of radio spectrum unlawful.⁷ Under current FCC policy, a lease or similar arrangement would only be unlawful if it were determined that either (i) the lease conveyed *de facto* or *de jure* control of the radio station licensee to another entity without prior FCC approval, or (ii) the lease resulted in the use of radio spectrum inconsistent with the technical and operational rules of the particular radio service (*e.g.*, permitted for-profit use of public safety spectrum). Leases *per se* are not unlawful. Thus, the Commission should act in a manner that interprets its regulations to “approve” all compliant leases or similar arrangements, whether or not they were entered into after the effective date of any new rules adopted in this proceeding.

Maritel previously submitted Reply Comments to the FCC in an informal adjudicatory proceeding that raised many of the same issues raised in this proceeding. *See Public Notice* No. DA 00-1953, rel. August 24, 2000 (*Rural Carrier Proceeding*). Maritel urges the Commission to incorporate the comments and reply comments received in the *Rural Carrier Proceeding* into this proceeding by reference. Those comments were strongly supportive of the Commission recognizing leasing as an acceptable practice, particularly as applied to the concrete example advanced by the regulatees in that case. The *Rural Carrier Proceeding* is certainly an example of why the FCC should not adopt

⁷ For VPC licensees, the FCC's rules require sharing of certain frequency assignments, by agreement, with the U.S. Coast Guard. *Amendment of the Commission's Rules Concerning Maritime Communications*, 13 FCC Rcd 19853, ¶¶ 48-49 (1998).

cumbersome procedures that require prior-approval of leasing arrangements -- that proceeding has remained pending for over six months. Six months is too long for a carrier's business plans to remain on hold, and is contrary to the notion of a "secondary market" operating without government intervention.

III. Conclusion.

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, Maritel respectfully urges the Commission to interpret its regulations to permit the leasing of commercial radio spectrum, especially by VPC licensees.

Respectfully submitted,

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February 9, 2001

CERTIFICATE OF SERVICE

I, Angela Collins, of Mintz, Levin, Ferris, Glovsky & Popeo, P.C., certify that I have, this 9th day of February, 2001, caused a copy of the foregoing "Comments" to be served upon the following by prepaid U.S. mail:

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